STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

ILLINOIS COMMERCE COMMISSION,	)	
On its own motion	)	
	)	Docket No. 06-0800
Investigation of Rider CPP of Commonwealth Edison	)	
Company, and Rider MV of Central Illinois Light	)	
Company d/b/a AmerenCILCO, of Central Illinois	)	
Public Service Company d/b/a AmerenCIPS, and of	)	
Illinois Power Company d/b/a AmerenIP , pursuant to	)	
Commission Orders regarding the Illinois Auction.	)	

INITIAL BRIEF OF
THE RETAIL ENERGY SUPPLY ASSOCIATION

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INTRODUCTION

Pursuant to the schedule established in this proceeding, the Retail Energy Supply Association ("RESA") hereby submits its initial brief. RESA is a non-profit trade association of independent corporations RESA is a non-profit trade association of independent corporations that are actively involved in the development of retail and wholesale competition in electricity and natural gas markets throughout the United States.[1] RESA members share the common vision that competitive retail energy markets deliver a more efficient, customer-oriented outcome than regulated utility structure. RESA is devoted to working with all stakeholders to promote vibrant and sustainable competitive retail energy markets for residential, commercial and industrial consumers. Several members of RESA have, or soon will be requesting, certificates from this Commission under Section 16-115 of the Public Utilities Act to provide electric service as Alternative Retail Electric Suppliers.

Although RESA did not sponsor testimony in this proceeding, it has reviewed the evidence carefully and wishes to provide the Commission with its positions on certain issues that are of interest to its members.

As a general principle, the Commission should take steps to ensure that the procurement process results in a market responsive structure that provides appropriate price signals. Faced with those price signals, generators, suppliers and customers will take steps that will lead to meaningful load reduction, more efficient utilization of

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[1] RESA's members include Consolidated Edison Solutions, Inc; Direct Energy Services, LLC; Hess Corporation; Liberty Power Corp.; Reliant Energy Retail Services, LLC; Sempra Energy Solutions; Strategic Energy, LLC; SUEZ Energy Resources NA, Inc. and US Energy Savings Corp. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

generation assets, peak shaving, and system-wide cost reduction. With those principles in mind, RESA provides the following argument on certain issues set out in the Joint Brief Outline.

III. Contested Issues

D. Enrollment Windows and Other Switching Rules

1. Enrollment window for smaller non-residential customers.

In the Post Auction Public Report, the ICC Staff recommended consideration of imposing enrollment windows on smaller non-residential customers served under the ComEd and Ameren blended products (BES-NRB and BGS-LFP, respectively). (*See* Staff Report at 40-49). Staff appears to have abandoned this proposal. Accordingly, no discussion of this issue is necessary, although RESA reserves the right to address that issue in its reply brief if it is raised by another party.

2. Pre-commitment or a shortened enrollment period for larger nonresidential customers.

The ICC Staff, Ameren and ComEd all support a shortened enrollment window for large customers served on the ComEd and Ameren Annual Products (BES-NRA and BGS-FP, respectively). They argue that reducing the enrollment window will result in lower auction prices. Ameren witness Nelson's testimony is characteristic of this claim: "These long enrollment windows result in a time-based risk premium which has increased the price for this supply option above that which most eligible customers are willing to accept." Ameren Ex. 5.0 at 5.

The driving force behind auction prices, however, is the inherent risk associated with committing to supply power over long periods of time. Thus, three year contracts resulted in prices higher than two year contracts and two year contracts were higher than one year contracts. Staff witnesses Kennedy and Zuraski summarized this impact as follows:

> [A]s reported in the Post-Auction Public Report of the Staff (see table on p. 17), we believe that longer term contracts will contain higher risk premiums than shorter term contracts. Longer-term contracts allow more time for market prices to deviate markedly from the utility's bundled rates. This encourages strategic (non-economic) switching by customers, and the anticipation of this by bidders raises the risk premium embedded in auction prices.
>
> Staff Ex. 4.0 at 19-20

Similarly, ComEd witness McNeil stated: "Electricity price volatility is a key driver of the amount of customer migration risk assumed by suppliers, and this volatility is greater over longer periods of time. . ." ComEd Exhibit 2.0 at 6.

Rather than fix the problem that needs attention – wholesale supply contracts in excess of one year - Ameren, ComEd and the ICC Staff propose reducing enrollment windows for customers with a demand greater than 400 KW and to eliminate the right of customers to switch to a retail electric supplier ("RES") outside of the enrollment window (this latter proposal is discussed in the next section of this brief). Ameren, ComEd and the Staff assert that the real reason auction prices were too high was because suppliers thought that customers had too much time to choose. Thus, they present the Commission with a false choice, between lower auction prices and longer periods for customers to exercise their options. Such a belief is expressed by Staff witnesses Kennedy and Zuraski, who argue: "this issue involves a balancing of the trade-off between tighter switching rules and lower auction prices versus looser switching rules and higher auction prices." Staff Ex. 4.0 at 2.

The problem, however, is that there is no evidence to support the proposition that reducing enrollment windows will result in lower prices for power. In fact, the Staff witnesses acknowledge that they have no quantification of the relationship between these two factors and so their recommendation on enrollment window length must instead rely upon mere judgment. Staff Ex. 1.0 at 13. Thus, shortening the enrollment windows of ComEd and Ameren as suggested by the Staff may or may not result in lower electric prices. It is beyond dispute, however, that reducing the amount of time that customers have to make their choices will negatively impact their ability to take advantage of alternative sources of power.

Coalition of Energy Suppliers ("CES") witnesses John Domagalski and Katie Papadimitriu testified that given the Commission's legislative mandate to promote competition, changes in the auction structure that would reduce customers' options "should be required to meet a very high burden of proof." They noted that in this case, no empirical proof has been provided that reducing customers' flexibility will somehow lower the price of power. CES Ex. 1.0 at 16-17. Yet the entirety of the ICC Staff rebuttal testimony on this issue consists of Mr. Kennedy and Mr. Zuraski transferring the burden of proof and claiming that the CES witnesses have not met that burden. Rather than provide evidence that restricting customers' rights will result in lower auction prices, the Staff witnesses simply state that the CES witnesses have not demonstrated that tighter switching rules are unwarranted. Staff Ex. 4.0 at 2. The Commission should demand evidence from those wanting to change the rules, rather than unsupported bald assertions.

An examination of the testimony of Ameren witness Nelson demonstrates the unsupported assumptions underlying the drive to reduce enrollment windows. He argued that customers have shown their ability to make fast decisions because "a significant portion of customers made their enrollment elections within 20 days." Ameren Ex. 5.0 at 2. He fails to note that while those customers indeed could have met a tighter timetable, others needed more than 20 days. There is no evidence supporting the assumption that all customers that made their enrollment election in more than 20 days would suddenly gain the ability to make decisions before that deadline. Mr. Nelson also argues that it is important that "a significant number of notices were received in the final three days of the window." He argues that "it is reasonable to assume" that this group will always act at the last minute, regardless of the duration of the window. *Id.* But why is that assumption reasonable? Isn't it just as reasonable to assume that a large number of those customers made a decision in the last three days because they needed the full amount of allotted time to make their decision? Alternatively, isn't it also possible that customers were waiting to see if a legislatively imposed rate freeze materialized and, therefore waited until the last minute? Is the fact that every party in this proceeding will probably file their briefs exactly on the due date evidence that they could have filed their briefs earlier? There is no support for that position, but Mr. Nelson seems to think so.

Mr. Nelson also argues that it is significant that the auction prices for Ameren's BGS-LFP supply were at about $85 per MWh and for smaller customers on the blended supply product were about $65 per MWh. Ameren Ex. 5.0 at 3. But is that price differential because suppliers thought that BGS-LFP customers had too long to make their decision? That is not likely because Ameren has even more generous enrollment rules for smaller customers than it has for their larger customers. In fact, the Staff stated that the prices for auction products utilized for large non-residential customers were considerably higher than the prices for residential and smaller, non-residential customers most likely due to a greater degree of risk to wholesale supplier that large customers will switch to RES service. Staff Ex. 1.0 at 6. That risk exists regardless of the windows given to each group.

3. Customers' rights to leave fixed price electricity service outside of the enrollment window.

The ICC Staff recommended that the Commission limit ComEd's larger non-residential customers' ability to migrate off its Blended and Annual product. Staff Ex. 1.0 at 14-15. The ICC Staff proposed that ComEd's switching rules be revised to eliminate the ability of CPP-A eligible customers who default to Rate BES-NRA (by virtue of their lack of affirmative choice during the enrollment window) to switch to a RES at anytime during the CPP-A supplier forward contract term. Ameren already restricts customers from leaving its service, so the Staff did not propose a modification to its rules.

ComEd supported the Staff proposal, although it disagreed with the portion of the Staff proposed tariff that allows customers who are reclassified from CPP-B supply group to the CPP-A supply group by virtue of load growth to switch from Rate BES-NRA to a RES during the CPP-A contract term. ComEd Ex. 2.0 at 10-11.

CES argued that ComEd should maintain its current migration rules. CES also proposed that utilities initiate a stakeholder process to develop customer communications regarding the way in which the enrollment window operates. CES Ex. 2.0 at 16-18.

Meanwhile, Ameren is headed in the opposite direction of ComEd. Ameren currently requires its larger customers to affirmatively opt-out of its service during the window. Failure to opt out results in the customer being placed on Rider BGS-L for a one year period. The Illinois Industrial Energy Consumers recommended that Ameren modify its rule so that, instead of being required to affirmatively opt out, that customers be required to opt into Rider BGS-L. Ameren agreed with the recommendation. Thus, customers that fail to exercise the option to opt into Rider BGS-L will be placed on Rider RTP-L, which has no minimum commitment period. Ameren Ex. 7.0.

The arguments in favor of and in opposition to rules that restrict customers from leaving fixed price electricity service outside of the enrollment window are similar to those discussed in the previous section of this brief discussing the duration of enrollment windows. As with the proposals to shorten enrollment windows, the ICC staff, ComEd and Ameren blame high auction prices on their perception that suppliers think customers have too much flexibility. Those arguments are just as invalid here as they are in the choice of enrollment windows. Very simply, the greatest impact on auction prices is the risk that costs of supply will change over time, making long term commitments to supply power uneconomic. A supplier facing the risk of being committed to supply power two or three years in the future is likely to be far more worried about the risk that their own costs could rise than the risk that customers have more than 20 days to make their choice to stay with utility service (the window issue) or that customers might leave utility service unless bound for some period of time (the migration issue).

As noted above, Ameren is going in the opposite direction of ComEd by proposing rules that will ensure that only customers that want fixed price service will take it. Ameren thus believes that its proposal to require customers to opt into its product that contains a one year term will "provide better consumer protection." Ameren Ex. 7.0 at 2. ComEd, on the other hand, is proposing that customers who fail to opt out will be forced to take ComEd service for one year. Thus, while both utilities propose to reduce the window to 20 days, ComEd's migration proposal makes any decision made during that 20 day window far more critical. The Commission should reject any modifications to ComEd's current migration rules.

4. Ameren-specific revisions designed to reduce load uncertainty in the Large Customer product

RESA takes no position on this issue at this time.

E. Fixed Price Product Supplier Contract Durations for Residential and Small Commercial Customer Groups

1. Continued use of multiple contract types

2. Use of shorter contracts

RESA adopts the arguments made by Direct Energy Services, LLC and Commerce Energy, Inc. ("DES-CEI") on these two issues. As shown in their initial brief, the Commission should encourage the use of short term contracts (i.e. contracts with less than one year duration) because (1) long term contracts to do not mitigate price risk for customers; (2) more market-reflective contracts benefit customers and the development of competition because they reduce the risk of price shock, provide more competitive options, provide environmental benefits and provide more Commission flexibility.

CONCLUSION

RESA members are ready and able to compete with Ameren and ComEd and thus bring to Illinois the benefits of competitive electric supply that were envisioned by the Commission when it first authorized the auction process. The best way to ensure that competition develops is to establish a procurement mechanism that allows auction prices to reflect the market and that provides customers with the opportunity to make economic choices. For those reasons, the Commission should accept the recommendations made in this brief.

Dated: May 30, 2007

Respectfully submitted,
Retail Energy Supply Association

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the Initial Brief of the Retail Energy Supply Association has been served upon the parties identified on the official service list for this docket maintained by the Clerk of the Illinois Commerce Commission, on May 30, 2007, by electronic mail.

s/ *Stephen J. Moore*______________________
Stephen J. Moore